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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,350	06/13/2005	Donald Paul Gardner	A36426-PCT-USA (072819.01)	3933
21003 7590 10/15/2007 BAKER BOTTS L.L.P. 30 ROCKEFELLER PLAZA 44TH FLOOR NEW YORK, NY 10112-4498			EXAMINER FONSECA, JESSIE T	
			ART UNIT 3633	PAPER NUMBER
			NOTIFICATION DATE 10/15/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DLNYDOCKET@BAKERBOTTS.COM

<b>Office Action Summary</b>	<b>Application No.</b> 10/517,350	<b>Applicant(s)</b> GARDNER, DONALD PAUL	
	<b>Examiner</b> Jessie Fonseca	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-9, 11-16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shortland et al. (WO 00/42274) in view of Wallace (US 5,043,839).

With regards to claim 1: Shortland et al. discloses a decorative floor covering for laying on the upper surface of a floor which:

the floor covering (1) has a decorative upper surface and a lower surface (fig. 1). The limitation "provide an air gap between the lower surface of the floor covering and the upper surface of the floor sufficient to ventilate the floor" is related to an intended use and is given little patentable weight.

Shortland et al. fails to disclose one or more studs formed on the lower surface of the floor covering. However, Wallace discloses a floor structure having one or more studs (24) laying on the upper surface of a floor (12) (col. 5, lines 19-24). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the floor covering of Shortland et al. to include one or more studs formed on the lower surface of the floor covering as taught by Wallace in order to

provide space for ventilation, where moisture can be collected, thus preventing water seepage towards the upper surface of the floor covering.

With regards to claim 2: Shortland et al., in view of Wallace, further discloses the lower surface of the floor covering (1) comprises PVC plastisol (page 2, line 17-18). PVC plastisol comprises a number of different components and is therefore chemically modified. "Adequate grip between the lower surface of the floor covering and the floor to which it is applied" is related to an intended use and is given little patentable weight.

With regards to claim 3: Shortland et al., in view of Wallace, further discloses the modification of the floor surface (1) in the form of a softening agent, such as a plasticizer (page 8, lines 5-10). As disclosed by the applicant on lines 24-26 of page 3 of the disclosure, the lower surface can be softened using a plasticizer.

With regards to claim 5: Shortland et al., in view of Wallace, further discloses the modification of the floor surface (1) in the form of a softening agent, such as a plasticizer (page 8, lines 5-10). As disclosed by the applicant on lines 24-26 of page 3 of the disclosure, the lower surface can be softened using a plasticizer. Any amount of plasticizer other than minimum amount used is considered an additional plasticizer.

With regards to claim 6: Shortland et al., in view of Wallace, further discloses one or more particulate materials (6) in the upper surface of the floor covering (1) to provide slip resistance (fig. 1 and page 3, lines 7-15).

With regards to claim 7: Shortland et al., in view of Wallace, further discloses the particulate material (6) is embedded in the decorative upper surface of the flooring

covering (1) is at least partially proud from the upper surface to achieve adequate slip resistance (fig. 1 and page 3, lines 7-15).

With regards to claim 8: Shortland et al., in view of Wallace, further discloses a plastics flooring material (page 2, line 14-18).

With regards to claim 9: Shortland et al., in view of Wallace, further discloses the plastics material is selected from a group consisting of PVC, plasticized acrylic, polyester, and PVC plastisol material (fig. 1 and page 3, lines 7-15).

With regards to claim 11: Shortland et al., in view of Wallace, further discloses the floor covering is heterogeneous flooring covering (fig. 1).

With regards to claim 12: Shortland et al., in view of Wallace, further discloses wear layer (3) (fig. 1).

With regards to claim 13: Shortland et al., in view of Wallace, further discloses the pigment for a decorative element (page 8, lines 6-8).

With regards to claim 14: Shortland et al., in view of Wallace, further discloses reinforcing support, preferably glass fibre reinforced no-woven supports (page 2, lines 21-22).

With regards to claim 15: Shortland et al., in view of Wallace, discloses a floor covering (1) having a decorative upper surface (page 3, lines 7-11) and a lower surface (fig. 1). It would have been obvious to one of ordinary skill in the art to loose lay a floor covering, if the coefficient of friction (grip) is adequate to hold the flooring in place, therefore obviating the need to adhere/fasten the flooring to the concrete surface.

Shortland et al. fails to disclose a lower surface on which one or more studs and/or other suitable profiles, which provide an air gap between the lower surface of the floor covering and the upper surface of the floor sufficient to ventilate the floor. However, Wallace discloses a floor structure having one or more studs (24) layer on the upper surface of a floor (12) in order to provide ventilation (col. 2, lines 19-24). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the floor covering of Shortland et al. to include one or more studs formed on the lower surface of the floor covering as taught by Wallace in order to provide space for ventilation, where moisture can be collected, thus preventing any water seeping towards the upper surface of the floor covering.

With regards to claim 17: Shortland et al., in view of Wallace, further discloses the floor covering (1) is a slip resistant floor covering (page. 3, lines 7-11)

Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shortland et al. (WO 00/42274) in view of Wallace (US 5,043,839), and in further view of Bergishagen (US 5,063,251).

With regards to claim 4: Shortland et al., in view of Wallace, fails to disclose the lower surface is roughened by including a blowing agent in the material from which the lower surface of the floor covering is formed. However, Bergishagen discloses a blowing agent for use with flooring tile (col. 1, lines 33-35). Bergishagen further discloses a cell structure being formed when a blowing agent is used with conjunction of plastic material (col. 1, line 59 - col. 2, lines 4). Therefore, it would obvious to one

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of ordinary skill in the art at the time of the invention was made to modify the floor covering of Shortland et al., in view of Wallace, to include a blowing agent on the lower surface of the floor covering as taught by Bergishagen in order to expand the lower surface of the floor covering to have a cell structure, thus creating a greater coefficient of friction between the floor covering and the floor for improved grip/friction.

With regards to claim 10: It is noted that examiner considers the unit, Phr (parts per hundred of resin), to be equivalent to unit, Php (parts per hundred parts of plastic), as both pertain to a plastisol material.

Shortland et al., in view of Wallace, further discloses the plastics material is in the amount of 100 to 200 parts per hundred part of plastics material (php), a filler preferably in the amount of 0 to 100 php, thermal stabilizer preferably in an amount of 1 to 3 php, and/or a pigment preferable in amount of 1 to 3 php (page 8, lines 5-8).

Shortland et al., in view of Wallace, fails to disclose the blowing agent in an amount of 0 to 2 php. However, Bergishagen discloses a blowing agent for use with flooring tile (col. 1, lines 33-35), where a cell structure is formed when a blowing agent is used with conjunction of plastic material (col. 1, line 59 - col. 2, lines 4).

Bergishagen further discloses a blowing agent preferably in an amount from 0 to 2 php (col. 4, lines 44-61). Therefore, it would obvious to one of ordinary skill in the art at the time of the invention was made to modify the floor covering of Shortland et al., in view of Wallace, to include a blowing agent in the amount of 0 to 2 php as taught by Bergishagen in order to optimize the expansion of the lower surface of the floor

covering to have a cell structure, thus creating a greater coefficient of friction between the floor covering and the floor for improved grip/friction.

### **Response to Arguments**

Applicant's arguments filed 8/7/07 have been fully considered but they are not persuasive.

Applicant notes that the claims have been amended to more clearly recite that "an air gap is formed". In response, the Examiner notes that the claims are directed to a ventilating floor covering and that recitation of the floor is related to an intended use. If the applicant's intention was to claim a combination of the floor covering and floor, the claims should be amended to clearly convey that. Nonetheless, the combination of Shortland et al, in view of Wallace, would be capable of producing an air gap between the lower surface of the floor covering and the upper surface of the floor sufficient to ventilate the floor.

Applicant further argues that Wallace fails to disclose an air gap, as conductive foam material is placed under the planar body of the tiles in the space between the support members. The Examiner notes that Wallace discloses the conductive foam material (50) is placed in remote areas under the flooring structure (10) (col. 8, lines 10-13). Wallace further discloses that floor structure (10) is usually placed on a flat surface, where moisture would be uniformly spread throughout, in which only a minimum amount of conductive foam material is necessary under the bottom layer to



detect moisture (col. 8, lines 13-18). Accordingly, an air gap between the floor surface and floor covering is maintained (col. 5, lines 19-24)

Applicant fails to recite the details of the applicant's invention to read over the prior art.

The objections of claims 1,6, 7, 10, and 15 have been withdrawn in view of the applicant's amendment filed 8/7/07

The rejection of claims 1-14 r under 35 U.S.C. 112, second paragraph has been withdrawn in view of the applicant's amendment and/or arguments filed 8/7/07.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

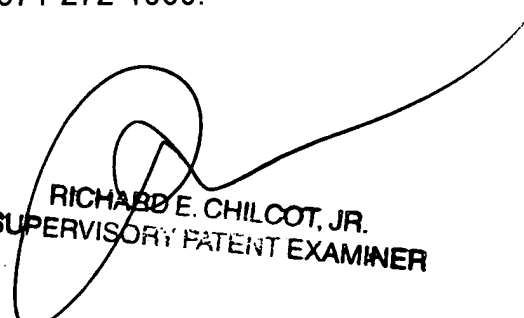
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessie Fonseca whose telephone number is (571)272-7195. The examiner can normally be reached on M-F 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571)272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JF JF  
10/4/07



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